

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

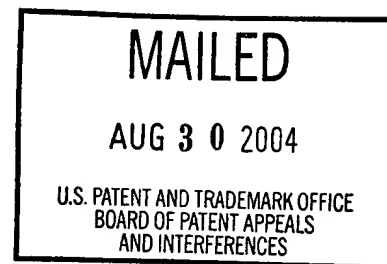
Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte DANE K. FISHER and
RAGHUNATH V. LALGUDI

Appeal No. 2003-1735
Application No. 09/394,745



**ORDER AUTHORIZING SUPPLEMENTAL EXAMINER'S ANSWER
UNDER 37 CFR § 1.193(b)(1)**

Before HARKCOM, Acting Chief Administrative Patent Judge, and
WINTERS and WILLIAM F. SMITH, Administrative Patent Judges.

WILLIAM F. SMITH, Administrative Patent Judge.

**ORDER AUTHORIZING SUPPLEMENTAL EXAMINER'S ANSWER
UNDER 37 CFR § 1.193(b)(1)**

Appellants filed a first Appeal Brief on March 13, 2003 (Paper No. 19), directed to the extant rejections under 35 U.S.C. § 101 (utility) and 35 U.S.C. § 112, first paragraph (enablement and written description). The examiner entered an Examiner's Answer on May 23, 2003 (Paper No. 22), in which the utility, enablement, and written

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description rejections were maintained. The case was received at the Board and a docketing notice issued on July 8, 2003.

Apart from the issues regarding utility, enablement, and written description, appellants have contested the propriety of the examiner's restriction requirement by filing a series of petitions. See, e.g., Paper Nos. 16, 20, and 28. In addition, appellants filed a second Appeal Brief on June 30, 2003 (Paper No. 27), stating "Appellant previously filed an Appellant's Brief directed to the outstanding rejections of the pending claims under 35 U.S.C. §§ 101 and 112, first paragraph, on March 13, 2003. Appellant requests that the present appeal be consolidated with the appeal already pending in the present application." The issue raised in the second Appeal Brief is stated to be "whether the refusal to examine the invention embodied in claims 8-10 because of alleged undue burden constitutes an improper rejection, and particularly, whether the purported restriction requirement within a single claim (not between claims) and the insistence that the invention as claimed will not be examined constitutes an improper rejection." Second Appeal Brief, page 3, second paragraph. As the record now stands, the examiner has not responded to the second Appeal Brief.

REMANDED

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Gary V. Harkcom Administrative Patent Judge))))	
Sherman D. Winters Administrative Patent Judge))))	BOARD OF PATENT
)	
William F. Smith Administrative Patent Judge))))	APPEALS AND INTERFERENCES

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